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quired, gives to insurer the right, at any time within 60 days after the delivery of proof of loss, to demand an appraisal.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1420, 1421; Dec. Dig. § 567.* 6 Va.-W. Va. Enc. Dig. 106.]

4. Insurance (§ 576*)—Adjustment of Loss—Stipulations—Waiver.—A fire policy stipulated for an award by appraisers when required. Insured gave prompt notice of a loss, and furnished proof of loss. An agent of insurer notified an attorney of insured that the amount of the loss claimed was excessive, and demanded an appraisal. During the investigation, the agent made no response to a question put to him as to whether an appraisal was desired. Held, that insurer did not waive its right to an appraisal; a waiver, to be effective, must have occurred with full knowledge of all material facts, and must be distinctly made.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1436-1438; Dec. Dig. § 576.* 6 Va.-W. Va. Enc. Dig. 87; id. 106; 13 id. 637.]

5. Insurance (§ 576*)—Adjustment of Loss—Stipulations—"Estoppel by Conduct."—The insurer was not estopped from insisting on an appraisal; for, to create an "estoppel by conduct," the party sought to be estopped must have caused the other party to occupy a more disadvantageous position than that which he would have occupied, except for such conduct.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1436-1438; Dec. Dig. § 576.* 5 Va.-W. Va. Enc. Dig. 238-9; 14 id. 406.

For other definitions, see Words and Phrases, vol. 8, p. 7654.]

Error to Circuit Court, Wise County.

Action by Robinett & Green against the North British & Mercantile Insurance Company. There was a judgment for plaintiffs, and defendant brings error. Reversed and rendered.

Geo. W. St. Clair and Bond & Bruce, for the plaintiff in error.
Morton & Parker and W. S. Cox, for the defendants in error.

WILKINSON v. DORSEY.

Nov. 16, 1911.

[72 S. E. 676.]

1. Equity (§ 348*)—Jurisdiction—Mistake—Evidence.—Equity will not relieve against an alleged mistake on proof of a possibility or even a probability of mistake; but the existence thereof must be established by the clearest and most satisfactory evidence.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 20; Dec. Dig. § 348.* 9 Va.-W. Va. Enc. Dig. 869.]

2. Reformation of Instruments (§ 20*)—Grounds.—Equity will re-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

form a written instrument where there has been an innocent omission or insertion of a material stipulation, contrary to the intention of both parties, and under a mutual mistake, and where there has been a mistake of one party, accompanied by fraud or other inequitable conduct of the remaining parties.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 80; Dec. Dig. § 20.* 9 Va.-W. Va. Enc. Dig. 866; 11 id. 905.]

3. Reformation of Instruments (§ 45*)—Mistake or Fraud—Evidence.—In a suit to compel performance of a contract to convey real estate, which defendant executed to her husband's creditor in payment of a debt, evidence held insufficient to establish that she was induced to execute the instrument by fraud or mistake as to her liability on the notes executed by her husband to secure the debt.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 159; Dec. Dig. § 45.* 11 Va.-W. Va. 905; 14 id. 727-129; id. 901.]

Appeal from Corporation Court of City of Roanoke.

Bill by J. H. Wilkinson against E. E. Dorsey for specific performance. Decree for defendant, and complainant appeals. Reversed.

C. B. & H. M. Moomaw and Hall, Woods & Jackson, for the appellant.

Scott, Altizer and Watts, for the appellee.

MARTIN *v.* MARTIN.

Nov. 16, 1911.

[72 S. E. 680.]

1. Partition (§ 4*)—Nature of "Partition."—"Partition" is the division between two or more persons of lands which they jointly own as coparceners, joint tenants, or tenants in common, and before land purchased by one of them can be brought into a partition suit along with lands jointly owned, pursuant to a verbal agreement, a state of facts must be established which will authorize a specific performance of the verbal agreement.

[Ed. Note.—For other cases, see Partition, Cent. Dig. §§ 6-12; Dec. Dig. § 4.* 10 Va.-W. Va. Enc. Dig. 769.

For other definitions, see Words and Phrases, vol. 6, pp. 5188-5190.]

2. Frauds, Statute of (§ 129*)—Verbal Agreement for Partition—Enforcement—Conditions—Precedent—Under the statute of frauds (Code 1904, § 2840), a verbal agreement for partition is not enforceable, unless the agreement is certain and definite, and the acts

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.